

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 02-31
Table of Allotments,	)	RM-10351
FM Broadcast Stations.	)	
(Memphis, Tennessee, Olive Branch	)	
and Horn Lake, Mississippi)	)	

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: February 6, 2002**

**Released: February 15, 2002**

**Comment Date: April 8, 2002**

**Reply Date: April 23, 2002**

By the Chief, Allocations Branch

1. Before the Commission for consideration is a Petition for Rule Making filed by Clear Channel Broadcasting Licenses, Inc. ("Clear Channel") proposing the reallocation of Channel 239A from Olive Branch, Mississippi, to Horn Lake, Mississippi, and modification of the license for Station WOTO to specify operation on Channel 239A at Horn Lake, Mississippi. To prevent the removal of sole local aural service at Olive Branch, Clear Channel further requests the reallocation of Channel 266C1 from Memphis, Tennessee to Olive Branch, Mississippi, and modification of the license for Station KJMS accordingly.<sup>1</sup> Clear Channel indicated that it would file applications for Channel 239A at Horn Lake and Channel 266C1 at Olive Branch.

2. Clear Channel filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O") 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal, Clear Channel states that Channel 239A may be allotted to Horn Lake consistent with the Commission's separation requirements at a site 13.7 kilometers north of the community. Further, allotting Channel 239A to Horn Lake would permit the community to have its first local aural service, triggering allotment priority number three of the Commission's allotment priorities. Clear Channel acknowledges that while its proposal would

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<sup>1</sup> Clear Channel is the licensee of Station KJMS, Memphis, Tennessee and Station WOTO, Olive Branch, Mississippi.

provide a first local aural transmission service to Horn Lake, the proposal removes the sole local operating service from Olive Branch. In support of this removal and to ensure continued local service at Olive Branch, Clear Channel has proposed the reallocation of Station KJMS, Channel 266C1 from Memphis to Olive Branch, with Memphis continuing to receive local service from nine AM stations and ten FM stations. In further support of its request, Clear Channel states that Horn Lake is a community for allotment purposes with a population of 14,099 people according to the 2000 U.S. Census. Clear Channel points out that its proposal will increase the total number of people served by Stations WOTO and KJMS by more than 7,400 and will eliminate an existing short spacing between Station WOTO and Station WCNA, Potts Camp, Mississippi.

3. In the Change of Community of License Order, the Commission expressed its concern with the potential migration of stations from rural areas to urban areas. The Commission relies on criteria established in Faye and Richard Tuck, 3 FCC Rcd 5374 (1988) to determine whether a community should be awarded a first local service preference.<sup>2</sup> In this instance Station WOTO, Olive Branch, already provides 70 dBu coverage to 54.8 percent of the Memphis Urbanized Area and the proposed operation at Horn Lake will encompass 68 percent of the Memphis Urbanized Area. Moreover, since Station KJMS is licensed to Memphis and does not intend to move its transmitter site, coverage of the Memphis Urbanized Area will not change. We will not require a Tuck showing because the requested reallocations do not constitute a migration to an urbanized area since both stations currently provide over 50 percent coverage to an urbanized area and will continue to do so if Clear Channel's proposal is granted.<sup>3</sup>

4. We believe that Clear Channel's proposal warrants consideration since the reallocation of Channel 239A from Olive Branch, Mississippi, to Horn Lake, Mississippi, could provide a first local service to the community of Horn Lake. Although the allotment at Horn Lake would remove the sole local service at Olive Branch, Clear Channel has requested the reallocation of Channel 266C1 from Memphis, Tennessee, to Olive Branch, Mississippi, to ensure continuation of local service to the community, leaving approximately twenty services licensed to Memphis. The allotment of Channel 239A at Horn Lake and Channel 266C1 at Olive Branch fall under priority 3), first local

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<sup>2</sup> (1) signal population coverage; (2) the size of the suburban community relative to the adjacent city; and (3) the interdependence of the suburban community with the central city.

<sup>3</sup> Although not required, Clear Channel did make a showing that Horn Lake is an independent community from the urbanized area. Horn Lake was founded in the mid-1800s and has been incorporated since 1973. Its residents elect a local government including a mayor and five aldermen. The City of Horn Lake has its own police and fire departments, ambulance director, city planning and parks director which serve the residents of the community. Horn Lake has its own school system, public library, and health care and dental facilities as well as a veterinary clinic. There are dozens of retail establishments including grocery stores, beauty salons, hotels, banks and approximately 20 restaurants. According to the U.S. Census's 1997 Economic Census there were approximately 2,850 jobs available in the community. The DeSoto Times Today offers residents weekly newspapers. Horn Lake has its own zip code (38367) and its own post office and the area code for Horn Lake (662) is different from Memphis. The Horn Lake Chamber of commerce maintains a local telephone directory which consists primarily of Horn Lake businesses. There are six churches and an American Legion Post in the community.

service, while retention of Channel 266C1 at Memphis would be compared under priority 4) other public interest matters. Therefore, the proposed arrangement of allotments appears preferable to the existing arrangement.

5. Channel 239A can be allotted to Horn Lake, Mississippi, in compliance with the minimum distance separation requirements at Clear Channel's specified site.<sup>4</sup> As requested, we shall propose to modify the license for Station WOTO to specify operation on Channel 239A at Horn Lake, Mississippi, and in accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 239A at Horn Lake. We shall also propose the reallocation of Channel 266C1 from Memphis, Tennessee, to Olive Branch, Mississippi, and modification of the license for Station KJMS to reflect operation at Olive Branch. Channel 266C1 can be allotted to Olive Branch in compliance with the Commission's spacing requirements at Clear Channel's requested site.<sup>5</sup> We shall propose the modification of the license for Station KJMS to specify operation at Olive Branch and in accordance with Section 1.420(i) of the Commission's Rules will not accept competing expressions of interest in the use of Channel 266C1 at Olive Branch.

6. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

Community	Channel No.	
	Present	Proposed
Horn Lake, Mississippi	-----	239A
Memphis, Tennessee	246C1, 259C, 266C1, 274C1, 283C1, 290C	246C1, 259C 274C1, 283C1, 290C
Olive Branch, Mississippi	239A	266C1

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

<sup>4</sup> The coordinates for Channel 239A at Horn Lake are 35-04-19 and 89-59-13.

<sup>5</sup> The coordinates for Channel 266C1 at Olive Branch are 35-08-01 and 90-05-38.

8. Interested parties may file comments on or before April 8, 2002, and reply comments on or before April 23, 2002, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

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9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D, C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the FCC Reference Information Center at its headquarters, Washington, D. C.